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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/918,223	07/30/2001	Barry Shantz	7496RC	4950

27752 7590 09/13/2004

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
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CINCINNATI, OH 45224

EXAMINER

TRAN, SUSAN T

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 09/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/918,223	<b>Applicant(s)</b> SHANTZ ET AL.	
	<b>Examiner</b> Susan T. Tran	<b>Art Unit</b> 1615	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 June 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-5, 10-13 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-5, 10-13, 15-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

Receipt is acknowledged of applicant's Response filed 06/10/04.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 5, 10 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Homebest Premium Baby Wipes (Homebest).

Homebest discloses a pop-up dispensing system comprising a container having a plurality of wipes (figures 1, 3, 5, 7 & 8). The wipes are pre-moistened and being stacked in a z-fold pattern (figures 5, 6 and 8-10). The wipe having interfold panel such as, first panel is approximately 9-10 cm, second panel is from about 5-6 cm, and the third panel is from about 4-5 cm (figure 1 (lines 3-5) & figure 11). The ingredients for the wipes are disclosed in figure 6. It is noted that Homebest does not disclose the concentration of the ingredients, as well as the claimed length of the first panel in 2-7 cm. However, generally, differences in size or concentration or temperature will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454,

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456, 105 USPQ 233, 235 (CCPA 1955). Applicant desires a dispensing system that provides ease of dispensation (page 4, lines 8-10). Homebest discloses the same z-fold interleave wipes in the same dispensing system for the same purpose, namely, the dispensing system lets you easily get a wipe with one hand while safely hold your baby with the other (figure 6). There're no unexpected and/or unusual results have been showed to establish criticality in the length of the first panel of the claimed invention over that of Homebest. Accordingly, it would have been obvious for one of ordinary skill in the art to modify the length of the first panel with the expectation of providing a dispensing system that is easily accessible with one hand. With regarding to the concentration of the ingredients, it would have been obvious for one of ordinary skill in the art to, by routine experimentation optimizing the concentration of the ingredients with the expectation of at least similar result, because Homebest discloses a similar baby wipe composition, e.g., a soft and strong wipe that is gentle against baby's skin and offers superior performance (figure 6).

### ***Response to Arguments***

Applicant's arguments filed 06/10/04 have been fully considered but they are not persuasive.

Applicant argues that the Homebest reference does not provide any guidance how or why to modify the combination of ingredients with size of baby wipe in order to create a more reliable dispensing system. Therefore a proper *prima facie* case has not been made. However, there're no unexpected and/or unusual results have been

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showed to establish criticality in the length of the first panel of the claimed invention over that of Homebest. "A more reliable dispensing system" is not a reasonable unexpected result over the size. Furthermore, generally, differences in size or concentration or temperature will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical. Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Applicant desires a dispensing system that provides ease of dispensation (page 4, lines 8-10). Homebest discloses the same z-fold interleave wipes in the same dispensing system for the same purpose, namely, the dispensing system lets you easily get a wipe with one hand while safely hold your baby with the other (figure 6). Suggestions to place this application in condition for allowance is summarized in the telephonic interview dated 03/11/04.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Claims Allowable***

Claims 2, 3, 11-13, 15 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Correspondence***

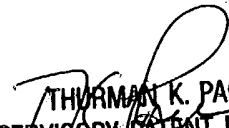
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan T. Tran whose telephone number is (571) 272-0606. The examiner can normally be reached on M-R from 6:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page, can be reached at (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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SUPERVISORY PATENT EXAMINER  
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